

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 71868/2000**

**AT AUCKLAND**

**Before:** M L Robins (Member)

**Counsel for Appellant:** Ms Chorao

**Appearing for the NZIS:** No appearance

**Date of Hearing:** 22 May 2000 and 14 June 2000

**Date of Decision:** 18 July 2000

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**DECISION**

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[1] This is an appeal against a decision of the Refugee Status Branch of the New Zealand Immigration Service ("the RSB"), declining the grant of refugee status to the appellant, a national of the People's Republic of China.

**INTRODUCTION**

[2] The appellant lodged his application for refugee status in June 1997, some seven months after his arrival in New Zealand. His application form gave the barest details. It was accompanied by a half-page typewritten statement. That statement was to the effect that the appellant had taken part in the pro-democracy movement in China in 1989, that he had worked in a restaurant for 10 years in China and that he had been under constant surveillance by his work unit from 1989 until he left China in 1994.

[3] Two and a half years after the appellant lodged his application, in December 1999, the RSB wrote to the appellant. In that letter, the RSB officer:

- advised the appellant (then the applicant) that he did not appear to meet the United Nations Convention definition of a refugee;
- requested that the appellant provide further specific information to enable the officer to make a better assessment;
- advised the appellant that if, after receiving the appellant's written response to her specific questions, she was still of the view that he was not a refugee, that she would make a decision "on the papers" i.e. without giving the appellant the benefit of an interview.
- Invited the appellant to provide any further information that he wished the RSB officer to consider.

[4] All the specific information requested by the RSB officer related to the appellant's role in the pro-democracy movement. On 25 December 1999, the appellant wrote a response which was translated into English and forwarded to the RSB officer. The appellant's statement covered only the specific questions asked. No further information was provided.

[5] The RSB officer, after considering the appellant's written response, made her decision "on the papers" and declined his application.

[6] The appellant's hearing before the Authority was, therefore, his first opportunity to give his evidence in person.

[7] Prior to the hearing before this Authority, the appellant submitted a three and a half page typewritten statement. That entire statement, except for the last paragraph, was devoted to the appellant's pro-democracy activities in 1989 and the problems he subsequently encountered as a result of that activity. In the last paragraph of this statement, the appellant claimed, for the first time, that he was "now a committed member of Falun Gong" and that if he were to return to China, he "would suffer harassment at the hands of the authorities".

[8] The appellant called a friend, Mr Q, to give evidence in support of his appeal.

## **THE APPELLANT'S CASE**

[9] The appellant was born in G city. He is 38 years of age and divorced. His ex-wife lives in China. There are no children of the marriage. The appellant's father died of tuberculosis in 1969 when the appellant was seven years old. As a former capitalist, the appellant's father had suffered many years of re-education and self-evaluation. When he was dying, the authorities refused to give him any medical assistance.

[10] The appellant grew up very bitter. Because of his background, he was refused permission to obtain higher education. He finished middle school in 1982. From 1982 to 1984, he did odd jobs including working part-time in the electroplating factory where his mother worked.

[11] In 1984, he secured a job at the G city sea transport bureau (the "shipping bureau"). This government organisation employed thousands of workers. From 1984 until May 1989, the appellant worked on the ships which plied international waters. He travelled to such countries as Latin America and Japan. He was issued with a sailor's travel document.

[12] He had two different kinds of responsibilities, maintaining the engines and supervising the cleaning of cabins.

[13] In May 1989, he returned to China after an overseas journey. The students' democracy marches had started. On 1 June 1989, the appellant joined about 3,000 others, mainly students, in a quiet and orderly sit-down protest in H square. He was there all day. The crowd, including the appellant, shouted some slogans.

[14] On 5 June 1989, the appellant joined an hour-long march of some 3,000-5,000 students from H Square to the government buildings. This took about an hour to walk. They then staged a sit-down protest for four to five hours outside the government buildings.

[15] Somehow the shipping bureau came to hear of his participation in these two protests. The appellant suspects that someone must have seen him and reported him.

[16] He was questioned by the shipping bureau security officers. After questioning, he was sent, in July 1989, to labour reform in the boat-building

section of the shipping bureau. In about September 1989, he was allowed to return to his previous work area but was, from then on, prevented from working on board the vessels. He was restricted to shore duties.

[17] His shore duties were essentially labouring jobs. He had to lift and carry things which were sometimes quite heavy. He had to do any odd jobs as required by his supervisor.

[18] His wages, when working onboard the ships, had been RMB400 per month; on shore, his wages were only RMB200 per month.

[19] The security officers began to question him every day. He had to report to them every morning. He would be questioned every working day of the six-day working week for three to five hours each time. This continued and, in fact, got worse, until the appellant finally escaped from China in 1994.

[20] During the questioning, the security officer would remain with the appellant. The appellant was required not only to answer questions about his attendance at the two demonstrations (which he had admitted) but also to write, reflect on and evaluate his actions. While he was writing and reflecting, the security officer did not get on with his own work but rather paid attention to what the appellant was doing.

[21] In addition to this daily questioning and self-examination, the appellant was under constant surveillance, including when he was eating his meals or going to the toilet. The appellant believes that the purpose of watching him this closely was to see if he made contact with any other pro-democracy supporters or to prevent him from committing suicide or escaping from the work unit.

[22] In 1994, the appellant met a friend who had recently returned from Tonga. The appellant learned that it was possible to travel to and to get a temporary permit to remain in Tonga. The appellant managed to get a passport (issued in February 1994) in his own name. He did this by bribing a Mr L who was a very senior employee in the shipping bureau, having under his control about 1,000 security officers. He was the deputy chief of the same security office who had tormented the appellant for the previous four and a half years. The bribe was RMB5,000 which the appellant estimated was worth about US\$1,000 at that time.

[23] Having secured a Chinese passport, the appellant left China in July 1994 bound for Tonga. As he crossed the Chinese border, a customs official asked him

if his passport was genuine and where he was going. The appellant answered that his passport was genuine and that he was going to Tonga. He was then allowed to leave.

[24] In Tonga, the appellant obtained employment as a chef in a Chinese restaurant. He had been in Tonga about three months when he learned that his mother was seriously ill and was about to undergo surgery for lung cancer. The appellant returned to G city in October 1995. He had no problems entering China on his passport.

[25] One week after his arrival, his mother had her operation. She remained in hospital for a further month. During this time, security officers from the shipping bureau, who somehow learned of the appellant's return, called at his mother's house asking for him. The appellant was not at home and so avoided them.

[26] The appellant tried to find work in G city but, without an identity card and without household registration, he found this difficult. Afraid because of the visits by the security officers, the appellant decided to go into hiding. He took his mother with him. First they rented an apartment on the other side of G city. The appellant's mother allowed the lease on her house to expire.

[27] After a month in this apartment, the appellant took his mother to the countryside to the village where she had grown up. It was a long coach journey. They lived with relatives in this village for five months.

[28] In June 1995, the appellant decided to leave China and return to Tonga. His mother's health had improved and he was frightened that he would be arrested. His mother returned to her previous house and started renting again. The appellant did not encounter any difficulties leaving China on his passport

[29] Once back in Tonga, the appellant had various jobs. He worked for a time as a chef in the restaurant which had employed him previously. He also worked as a shop assistant in a general trading store. His employers were all Chinese. Most of the shop customers were Tongans. The appellant conversed with the customers in English, having learned a little English before he left China.

[30] Near the end of 1996, the appellant decided to seek refuge in New Zealand. He had made enquiries of Chinese friends in Tonga about seeking refuge there but they told him Tonga does not accept refugees. He made no other attempts in

Tonga to apply for refuge or residence because there was a racial problem in Tonga.

[31] On arrival in New Zealand in November 1996, the appellant immediately contacted immigration consultants and instructed them to lodge his refugee claim. They neglected to do so until June 1997.

[32] In October 1998, the appellant read two newspapers, *The Pioneer* and *The Chinese Herald*. He read about the Falun Gong. He had never heard of this movement before. He was intrigued by its promises of improvement to mental and physical well-being.

[33] By coincidence, on the first Sunday of November 1998, the appellant and his friend, Mr Q, were jogging in an Auckland park when they suddenly happened upon a Falun Gong gathering. A Ms D was very generous of her time to them that day and answered many of their questions.

[34] From this time onwards, the appellant started attending the monthly gatherings on Sunday mornings in the park and weekly gatherings in central Auckland on Saturday mornings. The Saturday morning gatherings are led by Ms D. On Saturday mornings, there are about 10 participants in the group. The appellant only knows their surnames. He watched a video cassette given to him by Ms D and has read the book by the Falun Gong founder and leader, Mr Li Hongzhi.

[35] Since November 1998, the appellant has continued to attend every monthly Sunday morning gathering and every weekly Saturday morning gathering. He also practises and studies Falun Gong on his own at home.

[36] When the appellant heard about the crackdown on Falun Gong members in China in April 1999, he was very concerned about his personal safety should he ever have to return to China. He felt very safe in New Zealand, however.

[37] In July 1999, the appellant became more concerned when the Chinese government declared the Falun Gong to be a cult. He agreed with the Authority that this was a serious and dangerous development. He said that although he felt safe in New Zealand, he was worried about what would happen to him if he was forced to return to China.

[38] In November 1999, the RSB began to consider the appellant's claim and asked him for further specific information. The appellant responded (as previously stated in the introduction above) in a written statement dated 25 December 1999.

[39] Mr Q gave evidence of how he and the appellant first saw the practice of Falun Gong in the park and how they have both continued to attend Falun Gong gatherings on Saturdays and Sundays since December 1998. Mr Q said he practises the Falun Gong movements at home, using the diagrams in the book that was written by Mr Li Hongzhi. He produced two photographs of a group of Falun Gong practitioners. He and the appellant are easily identified as participants in this group. Mr Q is himself a refugee applicant. He has not yet been interviewed by the RSB.

### **THE ISSUES**

[40] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

[41] In terms of *Refugee Appeal No. 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

### **ASSESSMENT OF THE APPELLANT'S CASE**

[42] Before proceeding to determine the above issues, it is first necessary to make an assessment of the appellant's credibility.

[43] There were two limbs to the appellant's case:

- (i) The events of 1989 in China and their sequelae;

(ii) The appellant's practice of Falun Gong in New Zealand.

[44] For reasons which shortly follow, the Authority does not accept that the appellant has given a truthful account in regard to the first limb of his case.

[45] The Authority has some doubts about the truthfulness of the appellant's evidence in regard to his practice of Falun Gong, but for reasons which also follow, it gives him the benefit of those doubts.

### **THE FIRST LIMB – THE EVENTS OF 1989**

[46] The appellant's involvement in the pro-democracy movement was at the lowest level. He took part in two demonstrations. On both occasions, he was just one participant in a crowd of several thousands. Apart from his mere attendance at these two rallies, he had no political profile whatsoever.

[47] The appellant claims that, after three months of labour reform, he was subjected to daily sessions of questions and self examination. These sessions of three to four hours took place six days a week over a four and a half year period. The appellant was not one of many in a group, supervised by one security officer. These sessions were one to one.

[48] The Authority considers it implausible that an employee with such a low political profile would have been subjected to this level of attention by the workplace security office. It finds it extraordinary that the security office would direct a security officer to take up such a significant amount of his own time to supervise such a low level political activist. As for the claim that he was supervised when going to the toilet or having his meals, this aspect of his evidence makes the claim even more unbelievable.

[49] The appellant claimed that he was unable to obtain a passport legally so had to bribe a Mr L to help him. The Authority does not believe that the deputy chief of the security office would suddenly have such sympathy with the appellant that he would facilitate his departure from China.

[50] Having obtained his passport, the appellant was able to leave China twice and return once without any difficulty whatsoever. This demonstrates that the appellant was of no interest to the Chinese authorities whatsoever.



[51] The appellant's claim that he had to go into hiding on his return to China in 1994 is not credible. There was no need for him to go into hiding. He had, by his own account, left his workplace with the assistance and blessing of the deputy chief of the security office of his work unit. He had left and returned to China legally on his own passport.

[52] The appellant claimed that he had received two letters from his mother in which she said the security officers had been looking for him. He received one of these letters in March 1998, after he lodged his claim for refugee status. He said that he had not kept these letters. His first explanation for not keeping the letters was that he did not realise that they would provide relevant evidence for his refugee application. His second explanation was he did not keep the letters because he was afraid that the information contained in them might be leaked to his neighbours. In other words, he deliberately did not keep the letters. The Authority has concluded that if the appellant's mother sent him any letters they did not contain any advice that the security officers had been calling at her house.

[53] In summary, the Authority is prepared to accept, under this first limb of the appellant's case:

- (a) that he participated in two demonstrations in G city in June 1989; and
- (b) that he was required to do three months' labour reform from June or July 1989 to September 1989.

[54] The rest of the appellant's evidence under this head is rejected.

### **The Second Limb: Participation in Falun Gong**

[55] The reasons why the Authority has doubts about this part of the appellant's claim are:

- (a) Despite having been alerted by the RSB officer in December 1999 that his claim based on 1989 events was likely to fail and despite the fact that he had participated in Falun Gong since November 1998 and was very concerned about his safety since the crackdown in April 1999, the appellant failed to mention, in his written response to the RSB in December 1999, his Falun Gong activities in New Zealand.

- (b) Despite being represented by competent counsel before and during the appeal hearing, the appellant devoted only the last paragraph of the three and a half page typed statement to his Falun Gong activities.
- (c) Despite claiming that he knew the surnames of the 10 people in his weekly Falun Gong gatherings in central Auckland, the appellant was not able to name any except “Ms D” whom he claimed was the leader of the Saturday morning group.

[56] The Authority acknowledges that the RSB officer asked the appellant specific questions about the events of 1989. Her invitation to him to provide further information was not as clear as it could have been. The appellant was not represented by legal counsel at the time and may not have appreciated that the RSB officer was indicating (somewhat obliquely) that she was minded, on the evidence before her at that stage, to decline the application. This may explain why the appellant failed to mention his Falun Gong activities in his written response to the RSB interview report.

[57] In regard to the somewhat “last minute” appearance of the Falun Gong claim in the appellant's last written statement, the appellant said he recognised it was an important part of his case and he was merely highlighting it in the statement with a view to explaining it more fully at the appeal hearing.

[58] Given the above factors, the Authority has some doubt whether the appellant's claims in regard to his Falun Gong activities are truthful, but gives the appellant the benefit of that doubt in regard to this second limb of his claim. The Authority accepts that the appellant is a Falun Gong practitioner.

**OBJECTIVELY, ON THE FACTS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?**

[59] The Authority finds that there is not a real chance of the appellant being persecuted if he returns to China.

[60] In regard to the first limb, there is no real chance, based on the accepted facts, that the appellant will be persecuted because of his activities in 1989.

[61] The accepted facts are:

- (a) That the appellant participated in two demonstrations in G city in June 1989; and
- (b) That he was required to do three months' labour reform from June or July 1989 to September 1989.

[62] These facts disclose that the appellant had a low profile during the events of 1989. There have been numerous decisions of this Authority dealing with appellants of low profile who took part in a minor way in the 1989 demonstrations. These decisions have concluded that there is no real chance of persecution of such persons at the present time. By way of example the Authority refers to *Refugee Appeal No. 70238/96* (26 March 1997), *Refugee Appeal No. 70836/98* (8 October 1998), *Refugee Appeal No. 71116/98* (4 December 1998) and *Refugee Appeal No. 71213/98* (28 May 1999). There have of course been numerous other decisions of this Authority to similar effect.

[63] The Authority accepts that, in regard to the regime's branding of the appellant's father as a "capitalist", that the appellant came from a bad family background. There was no evidence however that this background would now cause the appellant any difficulties.

[64] In regard to the second limb, the appellant is not a Falun Gong leader or teacher. He described himself as "not a leader but a believer". He does not know the names of any other Falun Gong practitioners except for the leader, Ms D and obviously his friend Mr Q, whom he knew before he started practising Falun Gong. Mr Q said Ms D only knew the appellant's name because she asked him for it when demonstrating to him the correct way to perform a certain Falun Gong movement. Nobody else in either the Saturday or Sunday groups knows the appellant's name.

[65] Mr Q said that there is no leader; no-one standing at the front. He said that Ms D is not the leader. She is only one of the group although she sometimes helped perfect the others' movements. Mr Q said that as soon as the practitioners get to the gatherings, they simply join in. They keep their eyes closed through the entire session and disperse immediately afterwards. There is no social intercourse between the practitioners.

[66] There is no “register” of Falun Gong practitioners in New Zealand. There are no application forms or entry fees. In short, the appellant's practice of Falun Gong in New Zealand is at this stage completely anonymous.

[67] The appellant did not practise Falun Gong in China. He has no immediate family in China. His mother passed away before he started practising Falun Gong. No-one in China knows that he has practised Falun Gong.

[68] The Authority asked the appellant how, in these circumstances, anyone in China would find out he practised Falun Gong. He said he would be noticed. Country information which suggests that millions of Falun Gong practitioners have either stopped practising or have stopped practising Falun Gong in public, was put to the appellant. He was asked why he could not simply practise Falun Gong in private. He answered that he would practise both in public and in private.

[69] When asked why he would practise in public when it would clearly be dangerous he answered “for the sake of improving my fitness level, I would not consider so much”. When asked to clarify his answer he said:

“while I am practising Falun Gong I couldn't care about being arrested because Falun Gong has become part of my life already.”

[70] The Authority does not, for the following reasons, believe that this appellant would be so bold as to practise Falun Gong in public:

- (a) The appellant does not have a history of standing up to the Chinese authorities. His activities in 1989 were of the lowest level and he has not undertaken any political activities since then.
- (b) The appellant already practises Falun Gong both in public and private. When asked whether fellowship with other Falun Gong practitioners was important to him, he answered no.
- (c) Although he has regularly attended Saturday and Sunday gatherings since December 1998, he knows remarkably little about others who attend these gatherings. He had no interaction with them whatsoever. Ms D only knew his name because she had asked him for it when she was perfecting one of his movements. When asked whether it was important for him to spend time with other Falun Gong members or

whether it was important to Falun Gong members to visit each other's homes, he answered no.

- (d) Prior to the hearing, the appellant did not act like a person who was so committed to his Falun Gong beliefs that he would be prepared to put his life or freedom in jeopardy for them. He did not, for example, after the crackdown on Falun Gong in April 1999, or in July 1999, after the Falun Gong was declared a cult, bring his Falun Gong activities to the attention of the RSB, despite having been given the opportunity to do so.

In his statement to the Authority, he devoted only one paragraph out of three and a half pages to his Falun Gong beliefs.

At the hearing, the appellant was modest about his Falun Gong involvement. He did not display any discernible spiritual or emotional involvement with Falun Gong. For example, he emphasised the physical fitness benefits of Falun Gong rather than the spiritual benefits. He had no desire for fellowship or discussion or indeed any interaction with other Falun Gong practitioners. He had made no friends, learned no names, and had spoken to no-one except Ms D and Mr Q. He did not seek out Falun Gong, he found out about the group when he and Mr Q saw them one day while out jogging. When discussing the crackdown by the Chinese government on the Falun Gong he did not display any sign of anger over the treatment of Falun Gong practitioners. He merely said he had concerns about his own safety if he was to return to China. Certainly he did not present as a person who would be prepared to take such radical and dangerous actions as practising Falun Gong in public.

Falun Gong, (also known Falun Dafa) has a web site – [http://www.minghui.ca/eng/info\\_pak/info\\_index.dot.html](http://www.minghui.ca/eng/info_pak/info_index.dot.html). In a document on this website entitled “Falun Dafa in North America: Falun Dafa Information Package”, there is a brief introduction to Falun Dafa, an explanation of the Falun Dafa exercises, a report of the difficulties faced by practitioners in China, and other such matters. Under the heading “A Fact Sheet about Falun Dafa” is set out “some essential teachings of Falun Dafa”. These ten essential teachings include such things as:

- Truth - Compassion - tolerance is the fundamental principal of the universe.
- Self-development and refinement (moral upgrade) in daily life are the most important parts of Falun Dafa cultivation.
- To be a good practitioner, one has to think of others first, be a good person with the family, at work, and in society.
- The cultivation of Falun Dafa is formless, no worship, no religious ritual.

There is no prescription that Falun Gong be practised in public or in a group. Indeed under “How to Start” in this same information package, it is specifically stated “group practice is recommended but you may also practise at your own convenience”.

### **COUNTRY INFORMATION**

[71] There is a vast amount of country information about the Falun Gong.

[72] The Falun Gong is “a movement which combines elements from the meditative traditions of Buddhism and Taoism with the breathing techniques and shadow – boxing routines of traditional Chinese martial-arts disciplines”. It was created in 1992 by Mr Li Hongzhi, who now lives in the United States. The Economist: *Why the Exercisers Exercise China’s Party*; 31 July 1999, page 21.

[73] The Falun Gong was “tolerated officially as long as it agreed to function under a government umbrella organisation for popular health and sports movements”. It came under criticism when it withdrew from the organisation in 1996, The Guardian Weekly, *Ban on Sect Leaves Trail of Confusion*, 29 July to 4 August 1999, page 3.

[74] Human Rights Watch New York 2000,: *Human Rights Watch: China*, December 1999, page 181 reports:

“Restrains on religion and belief increased significantly during the year. On April 25, ten thousand members of Falun Gong (also known as Falun Dafa), surrounded Zhongnanhai, the Beijing compound housing China’s top leaders. The peaceful, silent demonstration was to protest a newspaper article disparaging Falun Gong, a quasi – religious meditation society whose beliefs were loosely based on Buddhist

and Daoist tradition. The size of the demonstration clearly shocked the government, and while authorities took no immediate action, they began a systematic crackdown three months later. On July 22, the Ministry of Civil Affairs labelled Falun Gong an illegal organisation and accused it of spreading “superstition” and “endangering social stability”. It banned public and private practice and distribution of the organisation’s literature. Police detained thousands of practitioners for reeducation and began to confiscate and destroy over one million books. A week later, the government issued an arrest warrant for Li Hongzhi, the group’s leader, who had been living in U.S. The government put the number of practitioners at two million; other estimates run as high as seventy million. Alarmed at the number of party members involved, the party leadership mounted a full-scale internal “rectification,” using the opportunity to emphasise the value of Marxism and reinvigorate President Jiang’s “three stresses” campaign to strengthen theoretical study, political awareness and good conduct among Party members. As of mid-October, the first set of trials of Falun Gong leaders was underway in southern China.”

[75] Human Rights Watch. New York, China Uses “Rule of Law” to Justify Falun Gong Crackdown, 9 November 1999:

“The Chinese leadership’s attempt to contain Falun Gong is part of a broader government effort to try to control all organisations, religious, civil, social or economic. The number of members, their ability to organise and their use of modern tools of communication have made the Falun Gong especially threatening. Concerns about social instability, fed by large-scale unemployment, a stagnant rural economy, and the demoralising effects of pervasive unemployment, add to the leadership’s need to ensure that the Chinese people’s first loyalties remain with the Chinese Communist Party .... The authorities, in carrying out the crackdown, seem to be carefully distinguishing between organisers and ordinary Falun Gong followers. In a November 5 circular, the People’s Supreme Court, admonished the courts to make a sharp distinction between “criminal elements” and cult leaders who should be treated harshly, and common Falun Gong practitioners who should be extracted from cults, educated, then reintegrated into the social fabric.”

[76] The distinction between leaders and ordinary followers of Falun Gong is also made in the Economist Article referred to above “Why the Exercisers Exercise China’s Party” pp 21 and 22:

“Though the more ardent practitioners of Falun Gong say they will keep their faith and not be cowed by the ban, the government’s crackdown appears in these early days to be succeeding. Members of the sect have been taken to schools and football stadiums for brief stints of “ideological education”, while those regarded as leaders are being held in jail for possible prosecution. The sect’s teaching materials, books, posters, audio cassettes and video tapes, have been destroyed. Followers no longer dare to practise publicly at dawn in the parks of Beijing. Sit-in demonstrations, which in the days leading up to the ban had involved tens of thousands of followers in dozens of cities, have subsided. Everyone in China has been put on notice that they face a choice: abandon Falun Gong or face the wrath of the party and the law.” (Emphasis added)

[77] Amnesty International – Report-ASA 17/54/99 China: People’s Republic of China. Report on Torture and Ill-treatment of Followers of the Falun Gong, 22 October 1999 states:

“Amnesty International is deeply concerned by reports that detained followers of the Falun Gong have been tortured or ill-treated in various places of detention in China. In early October 1999, one member of the group, a 42 year-old woman, was reportedly beaten to death in police custody in Shandong Province. Many followers of the group remain in detention across China and it is feared that they may be at risk of torture or ill-treatment. Many Falun Gong practitioners are middle-aged or elderly people, with a large proportion of women among them.

The Falun Gong – a movement which combines teaching of meditation and exercises as a method to improve health and moral standards, was banned by the Chinese government in July 1999. The government, apparently concerned by the large number of followers in all sectors of society – including government departments, declared it was “cult” and a “threat to stability” and launched a nationwide propaganda campaign against it. The campaign was described as an important “political struggle”. Thousands of Falun Gong followers who attempted to protest peacefully against the ban or who continued to practise exercises, were arbitrarily detained across China in the days and weeks which followed the ban. Many were reportedly beaten by police in the process. At least hundreds are believed to remain in detention. Some are now being brought to trial on politically motivated charges. They are likely to be sentenced to long prison terms after unfair trials.

The following are some of the reports of torture and ill-treatment of Falun Gong practitioners received by Amnesty International. Some are accounts of police brutality against people arrested in the immediate aftermath of the ban on the Falun Gong in July 1999. Many other cases have been reported. While in the current climate of repression it is difficult to verify these reports, they contain specific and often detailed information about the places and circumstances in which torture is reported to have occurred, including the names and details of many of the alleged victims, and in some cases their photograph. Most of these reports subscribe patterns of torture which are known to be common in China. They contain serious allegations which should be impartially investigated. Under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China ratified in 1988, China has the obligation to investigate all reports and complaints of torture, bring those responsible for torture to justice and compensate the victims.” (Emphasis added)

[78] The above report then goes on to document numerous cases of Falun Gong followers who have been arrested and tortured. Some of them have died in custody. All of the cases documented have one thing in common. The Falun Gong practitioners have all either had a profile as a Falun Gong leader or key member, or they have been arrested while practising Falun Gong exercises in public, or have taken other public actions such as appealing against the ban on the Falun Gong, or have been attending, with others, Falun Gong “practice sites”.

[79] Amnesty International Report-ASA 17/11/00 *China: People’s Republic of China*. The Crackdown on Falun Gong and Other So-Called “Heretical Organisations” 23 March 2000 reported:

“[Since the ban in July 1999], tens of thousands of Falun Gong practitioners have been arbitrarily detained by police, some of them repeatedly for short periods, and put under pressure to renounce their beliefs. Many of them are reported to have been tortured or ill-treated in detention. [ ]. Some practitioners have been



detained in psychiatric hospitals. Those who have spoken out publicly about the persecution of practitioners since the ban have suffered harsh reprisals.

While it is difficult to estimate accurately the number of Falun Gong practitioners currently detained or imprisoned – notably due to the continuous succession of arrests and releases – the information available indicates that the number is likely to be in the thousands. Some have been charged with crimes and tried, while others have been sent to labour camps without trial. According to Chinese official sources, by late November 1999, at least 150 people, officially described as “key” members of the Falun Gong, had been charged with crimes. The number of those by now charged or prosecuted under the Criminal Law is believed to be much higher. By early February 2000, at least 40 of those charged under the Criminal Law had been tried and sentenced to prison terms after unfair trials. In addition, hundreds, possibly thousands of other practitioners have been assigned, without charge or trial, to serve terms of “administrative” detention, in forced labour camps for up to three years. Unfair trials have continued and arrests and detentions of practitioners continue to be reported every day.” ..... (1. Introduction)

At a Press Conference on 2 December 1999, Quian Ziaoqian, Director General of the State Council Information Office, quoted police data referring to Falun Gong practitioners, according to which between 20 July and 30 October 1999, 35,792 people “had tried to attend illegal gatherings in public places in Beijing and were told to leave or were taken away from the scene”. He subsequently insisted that “those people were not and are not detained”, despite information from numerous sources indicating that many of those attending such gatherings were detained at least for short periods. Since then, thousands of other people have been detained across the country for peacefully protesting against the crackdown. Many have been sent to labour camps without charge or trial for periods of up to three years’ detention for “re-education through labour”. Others have been detained repeatedly by police, and fined, threatened or dismissed from their jobs. Many of them detained subsequently reported being held in poor and unsanitary conditions, and being beaten or otherwise ill-treated in detention.” (2.1. The Government’s Campaign and Accusations against the Falun Gong). (Emphasis added)

[80] Bureau of Democracy, Human Rights and Labor US Department of State *1999 Country Reports on Human Rights Practices: China*, February 25, 2000 reports, in relation to the situation which pertained in late 1999:

“Although the vast majority of ordinary Falun Gong practitioners who were detained later were released, authorities acted more forcefully against practitioners it identified as leaders. On October 25, the official media reported that at least 13 Falun Gong leaders had been charged with stealing and leaking state secrets. On October 31, a new anti-cult law was passed, which specifies prison terms of 3 to 7 years for cult members who “disrupt public order” or distribute publications. Under the new law, cult leaders and recruiters can be sentenced to 7 years or more in prison. On November 3, the authorities used the new law to charge six Falun Gong leaders, some of whom, it is believed, were arrested in July. Also, on November 8, the Government confirmed that 111 Falun Gong practitioners had been charged with serious crimes including, among others, disturbing social order and stealing state secrets.” (Section c. Freedom of Religion) (Emphasis added)

[81] The Department of Foreign Affairs and Trade (DFAT) provided the following report in November 1999:

A.5 PRC authorities have questioned large numbers of Falun Gong practitioners in their efforts to identify leaders and organisers. In many cases, such questioning has involved periods of detention. Early release is offered for those

who co-operate, including by identifying those who had “led them astray”. We have seen reports from non-government sources based in Hong Kong and abroad citing instances of physical abuse in order to obtain information about Falun Gong leaders and activities (these claims were repeated by Falun Gong members in a press conference in Beijing with members of the foreign media on 28 October 1999). In some instances, inducements have been offered to selected adherents to act as informants within the organisation. According to informed sources, another common practise employed by security authorities is to approach family members of a known Falun Gong adherent and ask them to help the authorities to identify those responsible for leading astray their family member. It is made clear that early release of the family member is contingent upon the provision of such information. We do not have accurate data on the number of people currently remaining in custody. The Hong Kong-based “Information Centre of Human Rights and Democratic Movement in China” has reported arrests in various parts of China on charges relating to Falun Gong activities (offences include the publication of Falun Gong literature, the setting up of a Falun Gong website, organising demonstrations, etc). Chinese authorities have released no details on trials to date. The main criterion for selecting individuals for prosecution while releasing others appears to be the degree to which an individual has played a leadership or organisational role in Falun gong, this is especially the case for those suspected of organising demonstrations and other perceived acts of defiance after the banning of Falun Gong on 22 July. Detainees who express contrition for their actions, renounce their beliefs and publicly denounce Falun Gong teachings are likely to be released quickly after questioning. Others have been released with a warning.

A.6 We have heard reports that individuals engaging in Falun Gong exercises in public places since 22 July have been detained by security authorities, in some cases for several days. This appears to vary greatly according to individual circumstances. Those who engage in Falun Gong exercises in very prominent locations or whose actions appear to be organised are more likely to be detained. If they are seen as playing an organisational or leadership role, they could face prosecution resulting in criminal or administrative punishment. According to media and other reports, those detained for participating in demonstrations, in most cases, are lectured on the error of their ways and the social damage caused by Falun Gong, and are encouraged to repent their actions and publicly renounce their beliefs. If they comply, they are usually released quickly. Those who refuse to cooperate with the authorities may be subject to longer periods of detention. We assess that ordinary adherents of Falun Gong who practise privately are unlikely to come to the attention of the authorities. Chinese authorities would be more likely to take an interest in members of the communist party or holders of public office who are known to practise Falun Gong. Such individuals could be questioned about their attitude to Falun Gong.

A.7 Relatives of high profile members of Falun Gong are likely to be questioned about their activities. It is possible that relatives of ordinary adherents may also be questioned. In some instances, the authorities might seek to encourage relatives to provide information about Falun Gong leaders and organisers (see A5 above).

A.8 Anecdotal evidence, including reports from representatives of other foreign embassies, indicates that the treatment of Falun Gong activities by government authorities does vary by province and by region, but we are unable to offer specific guidance on this point. Generally, southern provinces seem to enjoy a less rigorous approach than areas where Falun Gong is more of an issue, such as in the northeast. However, we are aware of exception to this rule. As a general rule, efforts by local authorities to implement central government instructions on any issue may vary considerably from locality to locality.

A.9 In recent months, signs have been placed in several public parks in Beijing (and presumably other locations) forbidding the practice of Falun Gong exercises. Public security officers have been posted in prominent public areas to try to identify

anyone who appears to be practising Falun Gong. In such cases, individuals are questioned and some individuals have been taken away for further questioning. This action appears to be aimed primarily at preventing public displays of defiance against the government's campaign against Falun Gong. Private practise on an individual level would be unlikely to attract such attention. However, profession of allegiance to the Falun Gong movement or organisation, or participation in group activities, is likely to lead to questioning by the authorities. In mid-October, the state council issued a circular (or directive) to local governments and departments and agencies under the state council, prohibiting civil servants and employees of state-owned enterprises from practising Falun Gong. According to an official Xinhua news agency report of 15 October, the circular, issued by the General Office of the State Council, directed that civil servants who practised Falun Gong should not be subject to administrative penalty if they clearly disengaged themselves from the organisation. However, those who "took part in illegal gatherings and continue to believe in the practices even after repeated education on the matter" would face various disciplinary actions in accordance with their individual circumstances. The circular directed that those whose actions had been politically motivated and had organised illegal gatherings with the result of disturbing social order and causing social instability should be sacked, and those who continued to engage in illegal gatherings and activities after the banning of the organisation on 22 July would be severely punished. Prior to the PRC's 50<sup>th</sup> anniversary celebrations on 1 October, Beijing authorities banned Qi Gong exercises in "important public places". This appears to have relaxed following the anniversary and individual Qi Gong practitioners can be seen in several public parks around Beijing. However, these individuals may be subject to questioning by public security officials.

A.10 Chinese authorities do have the capacity to monitor and/or restrict departure from China of suspected Falun Gong leaders and organisers, but it is not certain that they would wish to exercise this capacity in the case of ordinary members. We are not aware of any instances where returnees have been questioned about their Falun Gong involvement, but consider that this would be possible. The authorities might seek to question high profile advocates of Falun Gong on their return, or even take action to prevent their return, but are unlikely to take much interest in ordinary adherents.

Comment

Falun Gong is a proscribed organisation and since July the government has been intent on discrediting it through a propaganda campaign which still continues. Information is not available on the number of adherents originally detained in the aftermath of the banning of the organisation (probably totalling some thousands, but unlikely, in our view, to number in the tens let alone hundreds of thousands), or how many of them may have been formally arrested and charged. There have been very few media reports of actual arrests. We expect that in due course a number of Falun Gong leaders will be tried and sentenced. (Department of Foreign Affairs and Trade, Country Information report, 5 November 1999)." (Emphasis added)

### **THE AUTHORITY'S FINDINGS IN REGARDS TO THE APPELLANT'S CASE**

[82] The Authority accepts that the appellant is an ordinary member of the Falun Gong but we do not accept that he would practice in public in China. The Authority accepts that the appellant will be at risk of being arrested and questioned about his Falun Gong activities should they become known to the authorities. Further, the Authority accepts that in these circumstances he may come under pressured to discontinue practising Falun Gong. It is clear however from the

available country information that ordinary adherents of Falun Gong who practise privately are unlikely to come to the attention of the authorities, see in particular paragraph A6 of the DFAT report on page 18 of this decision.

[83] DFAT provided a further report in February 2000, which commented that:

“As far as we can assess, the Chinese government has applied judicial or administrative penalties only against those who have organised Falun Gong activities and/or protests in China. Ordinary members have not been treated in the same way and, we believe, generally remain able to practise Falun Gong exercises in private.” (*DFAT Country Information Report*, 4 February 2000).

[84] Taking all the above into account, the Authority finds that the appellant is able to practise Falun Gong in private and that if he does, there is no real chance that he will face persecution.

[85] Given the findings under the first issue posed, there is no need to go on and consider whether there is a Convention reason for the persecution claimed.

**CONCLUSION**

[86] For the above reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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M L Robins  
Member